



**Mitei v Republic (Criminal Revision E450 of 2024)
[2024] KEHC 16429 (KLR) (23 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16429 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E450 OF 2024
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

JOSPHAT KIPTOO MITEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Mark Mugun for the state

1. The applicant was charged with the offence of preparation to commit a felony contrary to section 308(2) of the *Penal Code*. The particulars of the offence are that on 16th June, 2024 at Chelabal area in Soy Sub-county within Uasin Gishu County, the applicant not being at the place of abode, had with him an article for use in connection with robbery with violence namely axe.
2. The applicant pleaded guilty to the offence before Hon. C. Wattimah on 19th June, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 3 years' imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the *Criminal Procedure Code* as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6) (a)&(b) of the *Constitution*.
4. The applicant seeks a sentence review. He pleads that a non-custodial sentence.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a. Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.



- b. Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c. Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d. Protection of the community: - where the offender is likely to pose a threat to the community.
 - e. Offender's responsibility to third parties: - where there are people depending on the offender.
6. The present circumstances of the case are that the applicant was prepared to commit a felony. He admitted to have had the intention of committing a felony. I believe that for the few months he has been in custody, his character has been shaped to a larger extent.
7. From the foregoing, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. The applicant to this end is placed on a probation sentence of 1 year. It is necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 23RD DAY OF DECEMBER, 2024.

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R. NYAKUNDI

JUDGE

